

REMARKS

Claims 1-20, 28 and 29 are pending. Claims 28 and 29 are currently amended. Claims 30 to 32 are new. An RCE application is concurrently submitted herewith. Reconsideration of the application in view of the amendments above and remarks below is requested.

I. The Objection to Claims 12, 13 and 29

With respect to claims 12 and 13 it is urged that the claims from which they depend are allowable for reasons of record and below. Reconsideration is urged.

Claim 29 is currently amended. Reconsideration is urged.

New claims 30-32 are added to be substantially similar to the objected claims. Accordingly, it is urged that new claims 30-32 are immediately allowed.

II. The Rejection of Claims 1-11, 14-20 and 28 under 35 U.S.C. 102(e)/103

Claims 1-11, 14-20 and 28 stand rejected under 35 U.S.C. 102(e)/103 as allegedly anticipated or obvious in light of U.S. Patent No. 7,070,820 (hereinafter referred to simply as "Simonsen"). This rejection is respectfully traversed.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Independent claims 1 and 19 require, *inter alia*, a core matrix and one or more coatings, wherein the core matrix includes: an active compound; a synthetic polymer in an amount of 0.1 to 10 % by weight of the core matrix; and antioxidant or reducing agent in an amount of 0.2 to 5 % by weight of the core matrix. In other words, a core matrix must include a specific combination of three constituents (two of which are in specified amounts and one of which is a synthetic polymer), and the core matrix must have one or more coatings. Applicants note that matrix is specifically defined in the specification to refer to the mixture which comprises the active compound. Further, core matrix is defined to either make up the entire homogenous core of the granule or make up the

mixture which is applied to a preformed inert core. Nowhere does Simonsen disclose the claimed core matrix including the combination of three constituents (two of which are in specified amounts). More specifically, nowhere does Simonsen describe a combination of synthetic polymer in an amount of 0.1 to 10 % by weight of the core matrix and antioxidant or reducing agent in an amount of 0.2 to 5 % by weight of the core matrix. To allege anticipation, the Examiner has directed applicant's attention to Col. 6, line 36-col. 7, line 65 and Col. 10. lines 1-7 to support the statement that the core also contains polymers. Applicants respectfully disagree with the Examiner. Nowhere does Simonsen describe synthetic polymers in the core. Col. 6 refers to polymers used for the coating of Simonsen, not the core. Col. 10 fails to describe synthetic polymer(s). Moreover, nowhere does Simonsen show the use of synthetic polymers in the requisite amount of 0.1 to 10 % by weight of the core matrix and antioxidant or reducing agent in an amount of 0.2 to 5 % by weight of the core matrix. Reconsideration is urged.

Moreover, the motivation offered by the Examiner to combine coatings materials of Simonsen with the core material of Simonsen is that the reference allegedly teaches all of the claimed ingredients within the same proportions for the same utility. Applicants respectfully traverse the Examiner's position and submit that this is improper for the following reasons.

First, although Simonsen does mention, *inter alia*, certain polymers for use in a coating, Simonsen is devoid of any indication of using the claimed synthetic polymers in a core matrix in the requisite amount. Thus, Simonsen provides no direction as to which of the many possible choices of amounts are likely to be successful.

Second, even assuming that the Examiner is correct in that coating materials of Simonsen could be used with the core materials of Simonsen (which Applicants do not concede would be proper), the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). See also, *In re Jones*, where the Court found there was no suggestion to combine the references to arrive at the claimed invention. Accordingly, there is no desirability or motivation to combine and/or substitute the coating materials cited by the Examiner with the claimed core materials. *KSR International CO. v. Teleflex Inc.*, 127 S. Ct. 1727 (2007) counsels against applying the "teaching", "suggestion" or "motivation" (TSM) test as "a rigid and mandatory formula". See *KSR*, 127 S. Ct. at 1741. However, Applicants submit that the lack of motivation or desirability

to combine or substitute known coating materials for the claimed core materials is a compelling factor showing independent claims 1 and 19 are not obvious. Reconsideration is urged.

Claim 28 is currently amended. Reconsideration is urged.

III. Conclusion

In view of the above, it is respectfully submitted that all claims are in condition for allowance. Early action to that end is respectfully requested. The Examiner is hereby invited to contact the undersigned by telephone if there are any questions concerning this amendment or application.

Respectfully submitted,

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/Michael W. Krenicky Reg. # 45411/
Michael W. Krenicky Reg. No. 45,411
Novozymes North America, Inc.
500 Fifth Avenue, Suite 1600
New York, NY 10110
(212)840-0097